

No. 10-22-00281-CR

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**In the Court of Appeals  
for the Tenth Judicial District  
Waco, Texas**

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EX PARTE ALLEN MICHAEL LEE

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Allen Lee,  
*Appellant,*

v.

The State of Texas  
*Appellee,*

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On Appeal from the  
85<sup>th</sup> Judicial District Court, Brazos County

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**APPELLANT'S BRIEF FOR ALLEN MICHAEL LEE**

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ORAL ARGUMENT REQUESTED

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## **I. INTRODUCTION**

Appellant, ALLEN LEE, respectfully submits this brief in support of his appeal from the denial of his motion for bond reduction via a Writ of Habeas Corpus. The trial court erred in denying Appellant's motion for bond reduction, as the bond amount set is excessively high and denies Appellant his constitutional right to pre-trial release.

## **II. STATEMENT OF FACTS**

On June 4, 2022, Appellant was arrested and charged with 2 counts of sexual assault of a child, and aggravated sexual assault of a child. Appellant has been incarcerated since that time, as he is unable to afford the \$500,000 bond set by the magistrate court. Appellant has strong ties to the community, including a job and a family.

On June 29, 2022, Appellant filed a writ of habeas corpus and motion for bond reduction, arguing that the bond amount set was excessively high and that he was not a flight risk or a danger to the community. The trial court denied Appellant's motion without explanation.

### III. ISSUE PRESENTED

The issue presented on appeal is whether the trial court erred in denying Appellant's motion for bond reduction, thereby denying Appellant his constitutional right to pre-trial release.

### IV. STANDARD OF REVIEW

The decision regarding a proper bail amount lies within the sound discretion of the trial court. Tex. Code Crim. Proc. Ann. art. 17.15 (West Supp. 2021). The appellate court must review the trial court's ruling on a request to reduce bail under an abuse of discretion standard. See *Ex parte Rubac*, 611 S.W.2d 848, 850 (Tex. Crim. App. 1981); *Clemons v. State*, 220 S.W.3d 176, 178 (Tex. App.-Eastland 2007, no pet.) (*per curiam*).

In determining whether the trial court abused its discretion, the appellate court does not substitute their judgment for that of the trial court. *Montgomery v. State*, 810 S.W.2d 372, 379-80 (Tex. Crim. App. 1990). The appellate court must determine whether the trial court's decision was made without reference to any guiding rules or principles of law, or in other words, whether the decision was arbitrary or unreasonable. *Id.* at 380. An abuse of discretion occurs when a trial court's decision is so clearly wrong as to lie outside the zone of reasonable disagreement. *Id.* at 391 (*op. on reh'g*).

## V. APPLICABLE LAW

The primary purpose of setting a pretrial bond should be to secure Appellant's presence at trial. See *Ex parte Rodriguez*, 595 S.W.2d 549, 550 (Tex. Crim. App. [Panel Op.] 1980); *Ex parte Rincon*, Nos. 04-13-00715-CR-04-13-00718-CR, 2014 WL 2443870, at \*1 (Tex. App.- San Antonio May 28, 2014, no pet.) (mem. op., not designated for publication). The amount of the bond necessary to achieve that purpose is committed to the trial court's sound discretion, although its discretion is bounded and guided by constitutional and statutory provisions. See *Ex parte Estrada*, 398 S.W.3d 723, 724 (Tex. App.-San Antonio 2008, no pet.). The Federal Constitution, the State Constitution, and the state laws prohibit "excessive" bail. U.S. Const. amend. VIII; Tex. Const. art. I, § 13; Tex. Code Crim. Proc. Ann. art. 1.09.

Article 17.15 of the Texas Code of Criminal Procedure provides that "bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with[;]" however, "[t]he power to require bail is not to be so used as to make it an instrument of oppression." Tex. Code Crim. Proc. Ann. art. 17.15(1), (2). Although a defendant's ability to make bail must be considered, it is not a controlling consideration. See *id.* art. 17.15(4); *Rodriguez*, 595 S.W.2d at 550. The trial court also must consider the nature of the defendant's offenses and the circumstances under which he allegedly committed them as well as the future safety of the community if the defendant is released on bail. See Tex. Code Crim. Proc. Ann. art. 17.15(3), (5). Apart

from these statutory considerations, the trial court also may consider the defendant's links to the community, including his family ties, employment history, prior criminal record, the existence of other bonds against him, and his compliance with the conditions of those bonds. See *Estrada*, 398 S.W.3d at 724.

## **IV. ARGUMENT**

### **A. The Trial Court Erred in Setting an Excessively High Bond**

Appellant argues that the trial court erred in setting an excessively high bond, as he is unable to afford the \$500,000 bond set by the trial court. The Eighth Amendment to the United States Constitution prohibits excessive bail, and the Texas Constitution similarly provides that “excessive bail shall not be required” (Tex. Const. art. I, § 11). The trial court must consider the defendant’s ability to pay when setting bail, and the bail amount must be reasonable in light of the charges and the defendant’s ability to pay. The Court held that the trial court must consider the factors set forth in Article 17.15 when ruling on a motion for bond reduction, and that the court must provide a reasonable explanation for its decision. *Ex parte Vasquez*, 248 S.W.3d 454 (Tex. Crim. App. 2008); *Ex parte Clayton*, 592 S.W.2d 494 (Tex. Crim. App. 1979) (The Court held that bail must be reasonable and not excessive, and that the court must consider the defendant's ability to pay when setting bail).

The Court of Criminal Appeals held that the trial court's denial of a motion for bond reduction without explanation constitutes an abuse of discretion. The trial court must provide a reasoned explanation for its decision, which may be based on the defendant's ability to pay, the nature of the charges, and the defendant's ties to the community. *Ex parte Martinez*, 340 S.W.3d 642 (Tex. Crim. App. 2011).

Here, Appellant has minimal prior criminal history, has strong ties to the community, and has a job and a family. Furthermore, Appellant is not a flight risk or a danger to the community. Despite these factors, the trial court set a bond amount that Appellant is unable to pay. This excessive bond amount effectively denies Appellant his constitutional right to pre-trial release. The district court judge did not give a reason for denying the writ of habeas corpus and request for reduction in bail. He simply refused to reduce the bond without making any factual or legal findings.

The record is silent as to whether the trial court applied the case-specific factors contained in Article 17.15. The trial court did not enumerate the factors, if any, it considered and did not make any case-specific findings when it imposed the increased bail. There is no specific evidence in this case of Appellant's risk of flight in terms of threats against the victims or evidence that Appellant intends to flee. See *Ex parte Bellanger*, No. 12-09-00246-CR, 2009 WL 4981457, at \*3 (Tex. App.-Tyler Dec. 23, 2009, no pet.) (in reversing bail of \$1,725,000 in indecency with a child case, noting lack of such evidence). Rather, he has familial ties to the community and a history of

employment. Nor does the record contain evidence of any threats against the victims or evidence suggesting that a lower bail amount would place either the victims' safety, or that of the community, at risk. In fact, there is evidence the complaining witness continually reached out to appellant on numerous occasion and does not fear him.

## **B. The Trial Court Erred in Denying Appellant's Motion for Bond Reduction**

Appellant further argues that the trial court erred in denying his motion for bond reduction without explanation. Article 17.15 of the Texas Code of Criminal Procedure provides that a defendant who is unable to make bail may apply to the court for a reduction of the bail amount. When considering a motion for bond reduction, the trial court must consider the factors set forth in Article 17.15 and the defendant's ability to pay.

Here, the trial court denied Appellant's motion for bond reduction without explanation. *Ex parte Martinez*, 340 S.W.3d 642 (Tex. Crim. App. 2011) (trial court failed to consider the factors set forth in Article 17.15 and Appellant's ability to pay).

In *Traylor-Harris v. State*, the Tyler Court of Appeals reversed the trial court's denial of a request to reduce bail, finding that the trial court abused its discretion by not considering the factors outlined in Article 17.15 of the Texas Code of Criminal Procedure. *Traylor-Harris v. State*, 2022 Tex. App. Lexis 6627, 12 (Tex. App. – Tyler, Aug. 30, 2022). (Court of Appeals reversed a trial court's denial of a request to reduce

bail, finding that the trial court abused its discretion by not considering the factors outlined in Article 17.15 of the Texas Code of Criminal Procedure.)

In the instant case the trial court gave no reasons for its denial to reduce bond in this case.

### **CONCLUSION AND PRAYER**

Appellant respectfully requests this honorable court, after reviewing the record in this case and considering the factors in Article 17.15, hold that the amount of Appellant's bail is unsupported by the evidence and therefore excessive. Accordingly, Appellant requests the appellate court make a finding the trial court abused its discretion by denying Appellant's habeas application and to further reverse and remand.

Respectfully Submitted.

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### **CERTIFICATE OF SERVICE**

On May 15, 2023, this document was served electronically on ADA Doug Howell with the Brazos County District Attorney's Office at [dhowell@brazoscountytexas.gov](mailto:dhowell@brazoscountytexas.gov).

/s/ Craig A. Greening  
Craig Greening

### **CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that brief contains 1,949 words, excluding portions of the brief exempted by Rule 9.4(i)(1).

/s/ Craig A. Greening  
Craig Greening